

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PIOTR J. GARDIAS,
Plaintiff,

v.

SAN JOSE STATE UNIVERSITY,
Defendant.

No. C04-04086 HRL

Consolidated With: C04-04768 HRL
C05-01242 HRL
C05-01833 HRL
C06-04695 HRL

**ORDER DENYING PLAINTIFF'S
"MOTION TO COMPEL NO. I"**

[Docket No. 112]

In this consolidated action for alleged employment discrimination, plaintiff Piotr Gardias (proceeding pro se) claims that defendant failed to promote him because of his age, national origin and an alleged disability.

Presently before the court is plaintiff's "Motion to Compel No. I" in which he seeks leave to take discovery of defense counsel, Mary Cain-Simon. He asserts that she participated in a "set up" and violated his privacy by disclosing his medical information to persons at San Jose State University where he is employed. The time for filing any opposition or reply has passed, and none has been filed. Nevertheless, this court deems the matter suitable for determination without oral argument, and the January 30, 2007 motion hearing is VACATED. See Civ. L.R. 7-1(b). For the reasons stated below, the motion is DENIED.

1 Although the Federal Rules of Civil Procedure do not expressly prohibit the taking of
2 discovery from opposing counsel, such discovery is generally permitted only under limited
3 circumstances where the requesting party shows that (1) no other means exist to obtain the
4 information; (2) the information sought is relevant and nonprivileged; and (3) the information is
5 crucial to the preparation of the case. See Massachusetts Mutual Life Ins. Co. v. Cerf, 177
6 F.R.D. 472, 478-79 (N.D. Cal. 1998) (citing Shelton v. American Motors Corp., 805 F.2d 1323,
7 1327 (8th Cir. 1986)).

8 Here, plaintiff essentially claims that he should be permitted to take discovery of
9 opposing counsel because she allegedly violated his privacy rights. However, plaintiff has not
10 demonstrated that any of the three factors weigh in favor of permitting the discovery he seeks.
11 In view of plaintiff's allegations in this litigation, the court is unpersuaded that the requested
12 discovery is crucial to the preparation of his case, which concerns whether defendant
13 wrongfully failed to promote him. Accordingly, IT IS ORDERED THAT plaintiff's motion for
14 leave to take discovery of defense counsel is DENIED.

15 Dated: January 17, 2007


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17 HOWARD R. FLOYD
18 UNITED STATES MAGISTRATE JUDGE
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A copy of this document will be mailed to:

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San Jose, CA 95110

Pro Se Plaintiff

Mary Susan Cain-Simon
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Oakland, CA 94612-0550

Counsel for Defendant

Dated: 1/17/07 /s/

Chambers of Magistrate Judge Lloyd